

provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

List of Subjects in 30 CFR Part 936

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 20, 1995.

Charles E. Sandberg,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 37-3-7097; FRL-5264-9]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; Butte County Air Pollution Control District, Mojave Desert Air Quality Management District, Monterey Bay Unified Air Pollution Control District, Santa Barbara County Air Pollution Control District, and Yolo-Solano Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is proposing to approve revisions to the California State Implementation Plan (SIP) which concern the control of volatile organic compound (VOC) emissions from the manufacture and application of cutback and emulsified asphalt materials.

The intended effect of proposing approval of these rules is to regulate emissions of VOCs in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA's final action on this notice of proposed rulemaking (NPRM) will incorporate these rules into the federally approved SIP. EPA has evaluated each of these rules and is proposing to approve them under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards, and plan requirements for nonattainment areas.

DATE: Comments must be received on or before August 28, 1995.

ADDRESSES: Comments may be mailed to: Daniel A. Meer, Rulemaking Section [A-5-3], Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

Copies of the rule revisions and EPA's evaluation report of each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95814.

Butte County Air Pollution Control District, 9287 Midway, Suite 1A, Durham, CA 95938.

Mojave Desert Air Quality Management District, 15428 Civic Drive, Victorville, CA 92392.

Monterey Bay Unified Air Pollution Control District, 24580 Silver Cloud Court, Monterey, CA 93940.

Santa Barbara County Air Pollution Control District, 26 Castilian Drive B-23, Goleta, CA 93117.

Yolo-Solano Air Quality Management District, 1947 Galileo Court, Suite 103, Davis, CA 95616.

FOR FURTHER INFORMATION CONTACT: Patricia A. Bowlin, Rulemaking Section [A-5-3], Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901, (415) 744-1188.

SUPPLEMENTARY INFORMATION:

Applicability

The rules being proposed for approval into the California SIP include: Butte

County Air Pollution Control District (BCAPCD) Rule 241, Cutback and Emulsified Asphalt; Mojave Desert Air Quality Management District (MDAQMD) Rule 1103, Cutback and Emulsified Asphalt; Monterey Bay Unified Air Pollution Control District (MBUAPCD) Rule 425, Use of Cutback Asphalt; Santa Barbara County Air Pollution Control District (SBCAPCD) Rule 329, Cutback and Emulsified Asphalt Paving Materials; and Yolo-Solano Air Quality Management District (YSAQMD) Rule 2.28, Cutback and Emulsified Asphalts. These rules were submitted by the California Air Resources Board to EPA on May 13, 1993; December 22, 1994; November 18, 1993; June 19, 1992; and November 30, 1994 respectively.

Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 CAA or pre-amended Act), that included the Chico Area, the Southeast Desert Modified AQMA Area, the Monterey Bay Area, the Santa Barbara-Santa Maria-Lompoc Area, and the Sacramento Metro Area¹. 43 FR 8964; 40 CFR 81.305. Because these areas (with the exception of the Chico Area) were unable to meet the statutory attainment date of December 31, 1982, California requested under section 172(a)(2), and EPA approved, an extension of the attainment date to December 31, 1987. [40 CFR 52.222] On May 26, 1988, EPA notified the Governor of California, pursuant to section 110(a)(2)(H) of the pre-amended Act, that the above districts' portions of the California SIP were inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Pub. L. 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401-7671q. In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies.

Section 182(a)(2)(A) applies to areas designated as nonattainment prior to enactment of the amendments and classified as marginal or above as of the

¹ The BCAPCD lies within the Chico Area. Portions of MDAQMD lie within Southeast Desert Modified AQMA Area. YSAQMD lies within the Sacramento Metro Area.

date of enactment. It requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172(b) as interpreted in pre-amendment guidance.² EPA's SIP-Call used that guidance to indicate the necessary corrections for specific nonattainment areas. Southeast Desert Modified AQMA Area is classified as severe-17. Monterey Bay Area and Santa Barbara-Santa Maria-Lompoc Area are classified as moderate. Sacramento Metro Area is classified as severe.³ Therefore, all these areas (with the exception of the Chico Area, which is classified as transitional) were subject to the RACT fix-up requirement and the May 15, 1991 deadline.

The Chico Area is subject to Section 185A and Section 172(c)(1) instead of Section 182(a)(2)(A). Section 185A specifically exempts transitional areas from Subpart 2 (of Title I, Part D), including any RACT fix-up obligations, until December 31, 1991. Section 172(c)(1) requires transitional areas to correct any RACT deficiencies regarding enforceability (see General Preamble, 57 FR 13525).

The State of California submitted many revised RACT rules for incorporation into its SIP on May 13, 1993; December 22, 1994; November 18, 1993; June 19, 1992; and November 30, 1994, including the rules being acted on in this document. This document addresses EPA's proposed action for BCAPCD Rule 241, Cutback and Emulsified Asphalt; MDAQMD Rule 1103, Cutback and Emulsified Asphalt; MBUAPCD Rule 425, Use of Cutback Asphalt; SBCAPCD Rule 329, Cutback and Emulsified Asphalt Paving Materials; and YSAQMD Rule 2.28, Cutback and Emulsified Asphalts. The BCAPCD adopted Rule 241 on January 12, 1993; the MDAQMD adopted Rule 1103 on December 21, 1994; the MBUAPCD adopted Rule 425 on August 25, 1993; the SBCAPD adopted rule 329 on February 25, 1992; and the YSAQMD

adopted Rule 2.28 on May 25, 1994. These submitted rules were found to be complete on July 19, 1993; December 27, 1993; January 3, 1995; August 27, 1992; and January 30, 1995 pursuant to EPA's completeness criteria that are set forth in 40 CFR Part 51 Appendix V⁴ and are being proposed for approval into the SIP.

The submitted rules control VOC emissions from the manufacture, sale, mixing, storage, use, and application of cutback and emulsified asphalt materials. VOCs contribute to the production of ground-level ozone and smog. The rules were adopted as part of each district's efforts to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and in response to EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement. The following is EPA's evaluation and proposed action for these rules.

EPA Evaluation and Proposed Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and Part D of the CAA and 40 CFR Part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents listed in footnote 2. Among those provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for what is RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to "fix-up" their RACT rules. See section 182(a)(2)(A). The CTG applicable to all of these rules is entitled, "Control of Volatile Organic Compounds from Use of Cutback Asphalt," EPA-450/2-77-037. Further interpretations of EPA policy are found in the Blue Book, referred to in footnote 2. In general, these guidance documents have been set

forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

BCAPCD Rule 241, Cutback and Emulsified Asphalt; and MDAQMD Rule 1103, Cutback and Emulsified Asphalt are new rules that were adopted to limit VOC emissions from the use of cutback and emulsified asphalts.

MBUAPCD Rule 425, Use of Cutback Asphalt includes the following significant changes from the current SIP:

- Prohibition of manufacture and sale
- Maximum allowable distillate content for slow cure cutback asphalt of 0.5 percent
- Maximum allowable petroleum solvent content for emulsified asphalt of 3 percent
- ASTM Test Method D244-88 for emulsified asphalt
- Recordkeeping requirements

SBCAPCD Rule 329, Cutback and Emulsified Asphalt Paving Materials includes the following significant changes from the current SIP:

- Modified definitions of "Asphalt" and "Cutback asphalt"
- Sections for applicability, prohibitions, recordkeeping, and test methods

Maximum allowable reactive organic compound content for cutback asphalts of 0.5 percent

- No penetrating prime coat, cold-weather application, or asphalt plant distance exemptions

ASTM Test Method D244 for emulsified asphalt

YSAQMD Rule 2.28, Cutback and Emulsified Asphalts includes the following significant changes from the current SIP:

- No penetrating prime coat exemption
- Maximum allowable solvent content for emulsified asphalts of 3 percent
- Prohibitions of manufacture and sale and of specification
- Detailed recordkeeping and test methods provisions

(A detailed summary of rule highlights and changes is provided in the TSD's dated June 9, 1995.)

EPA has evaluated the submitted rules and has determined that they are consistent with the CAA, EPA regulations, and EPA policy. Therefore, BCAPCD Rule 241, Cutback and Emulsified Asphalt; MDAQMD Rule 1103, Cutback and Emulsified Asphalt; MBUAPCD Rule 425, Use of Cutback Asphalt; SBCAPCD Rule 329, Cutback and Emulsified Asphalt Paving Materials; and YSAQMD Rule 2.28, Cutback and Emulsified Asphalts are being proposed for approval under section 110(k)(3) of the CAA as meeting

² Among other things, the pre-amendment guidance consists of those portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 Federal Register Notice" (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988); and the existing control technique guidelines (CTGs).

³ Chico Area, Southeast Desert Modified AQMA Area, Monterey Bay Area, and Santa Barbara-Santa Maria-Lompoc Area retained their designations of nonattainment and were classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 55 FR 56694 (November 6, 1991). Sacramento Metro Area was reclassified from serious to severe effective on June 1, 1995. See 60 FR 20237 (April 25, 1995).

⁴ EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

the requirements of section 110(a) and Part D.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. Section 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. §§ 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under sections 110 and 301 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds.

Union Electric Co. v. U.S. E.P.A., 427 U.S. 246, 256-66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

Unfunded Mandates

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of \$100 million or more to the private sector or to State, local, or tribal governments in the aggregate.

Through submission of this state implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under Part D of the Clean Air Act. These rules may bind State, local, and tribal governments to perform certain actions and also require the private sector to perform certain

duties. The rules being proposed for approval by this action will impose no new requirements because affected sources are already subject to these regulations under State law. Therefore, no additional costs to State, local, or tribal governments or to the private sector result from this action. EPA has also determined that this proposed action does not include a mandate that may result in estimated costs of \$100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

The OMB has exempted this action from review under Executive Order 12866.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compound.

Authority: 42 U.S.C. 7401-7671q.

Dated: July 17, 1995.

Felicia Marcus,

Regional Administrator.

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40 CFR Part 271

[FRL-5265-4]

State of Wyoming; Final Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of tentative determination on application of Wyoming for final authorization, public hearing and public comment period.

SUMMARY: Wyoming has applied for final authorization of its hazardous waste regulatory program under the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed Wyoming's application and has made the tentative decision that Wyoming's hazardous waste program satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA intends to grant final authorization to the State to operate its program subject to the limitations on its authority retained by EPA in accordance with the Hazardous and Solid Waste Amendments of 1984. Wyoming's application for final authorization is available for public review and comment and a public hearing will be

held to solicit comments on the application.

DATES: A public hearing is scheduled for August 29, 1995, at 7:00 p.m., at the Laramie County Library, Pioneer Room, 2800 Central Avenue, Cheyenne, Wyoming, at 7:00 p.m. Wyoming will participate in the public hearing held by EPA on this subject. All comments on the Wyoming's final authorization application must be received by the close of business on August 28, 1995.

ADDRESSES: Copies of Wyoming's final authorization application are available during business hours at the following addresses for inspection and copying: U.S. EPA Region VIII, Library, Suite 144, 999 18th Street, Denver, Colorado 80202-2466 and at the Department of Environmental Quality, Herschler Building, 4th Floor, 122 West 25th Street, Cheyenne, Wyoming 82002. Written comments should be sent to Marcella DeVargas, Mail code: 8HWM-WM, U.S. EPA Region VIII, 999 18th Street, Suite 500, Denver, Colorado, 80202-2466.

FOR FURTHER INFORMATION CONTACT: Marcella DeVargas, U.S. EPA Region VIII, 999 18th Street, Suite 500, Denver, Colorado, 80202-2466, Phone 1-800-227-8917 or 303-293-1670.

SUPPLEMENTARY INFORMATION:

A. Background

Section 3006 of the Resource Conservation and Recovery Act (RCRA) allows EPA to authorize State hazardous waste programs to operate in the State in lieu of the Federal hazardous waste program, subject to the authority retained by EPA in accordance with the Hazardous and Solid Waste Amendments of 1984 (HSWA). Two types of authorization may be granted. The first type, known as "interim authorization," is a temporary authorization which is granted if EPA determines that the State program is "substantially equivalent" to the Federal program (Section 3006(c), 42 U.S.C. 6926(c)). Interim authorization is currently available only for requirements imposed pursuant to HSWA.

The second type of authorization is a "final" (permanent) authorization that is granted by EPA if the Agency finds that the State program (1) is "equivalent" to the Federal program, (2) is consistent with the Federal program and other State programs, and (3) provides for adequate enforcement (Section 3006(b), 42 U.S.C. 6926(b)). States need not have obtained interim authorization in order to qualify for final authorization. EPA regulations for the interim or final State